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In the Supreme Court of the United States

OCTOBER TERM, 1949.

No. 413.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE OHIO POWER COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

BRIEF OF RESPONDENT, THE OHIO POWER COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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INTRODUCTORY STATEMENT.

The narrow question decided by the court below in this case is whether Control Operators have "authority * * * responsibly to direct" other employees within the meaning of Section 2(11) of the National Labor Relations Act, as amended, under the undisputed facts in this case. Those facts disclose, as we shall discuss in greater detail later, that the question is very narrow indeed. The facts in this case relate to a unique and unusual job classification unlike any other job classification. For that reason the decision below cannot have any broad application as a precedent; it is limited to the unusual facts in this case.

The petitioner in its petition has discussed under the heading "Reasons For Granting This Writ" the two reasons it advances for the granting of the writ prayed for.

The first reason advanced (Petition pages 14-23) seems to be that a novel question is presented which would affect the status of at least 200,000 employees under the National Labor Relations Act, as amended, and that, therefore, a question of substantial public importance is presented. The second reason advanced (Petition pages 24-33) is that the Board, an administrative, fact finding body, believes that the United States Court of Appeals for the Sixth Circuit erred in its determination of a proposition of law, namely, whether resort should be had to the legislative history of a statute which is plain and unambiguous.

Each of these reasons is based upon premises which are completely unsupported by the record in this case. When the uncontradicted evidence in the record is contrasted with the claims made by the petitioner it is impossible to escape the conclusion that the petitioner has distorted the facts and has gone outside the record in an attempt to interest this Court in a case in which it would not be interested under the actual facts and thereby to obtain a further review not warranted by the facts at issue. The fact of the matter is that the issue in this case is very narrow. It turns simply upon a set of peculiar, *local* facts, not involving any precedent of national significance.

In order to display the falsity of the premises on which the petition is based it is necessary to refer to the undisputed facts.

It is important to emphasize that there can be no dispute on the basic and fundamental facts in this case since the only witness to testify on them was Fred Shedd, the respondent's Superintendent of Plants. The court below did not actually overturn the Board's findings on the basic facts so far as they were found, but based its decision on the Board's findings, plus other undisputed facts in the record ignored by the Board, but, most of all, on the Board's mistaken concept of the law. The discussion of the facts we are about to make is now important not in order to determine whether the decision below was right or

wrong, but in order to determine whether there is any basis for issuing a writ of certiorari. We submit there is none.

STATEMENT OF CASE TO CORRECT INACCURACIES AND OMISSIONS.

I. DESCRIPTION OF TIDD PLANT AND JOB CLASSIFICATION OF CONTROL OPERATORS.

The Tidd Plant of The Ohio Power Company is a steam electric generating plant erected adjacent to the Ohio River near Brilliant, Ohio. This produces electric energy which is distributed throughout a large area. The plant was placed in operation in the year 1945. At the time of the proceedings herein there was in operation one generating unit with a rated output of 100,000 kilowatts per hour. Another unit, which was to be a duplicate of the then existing unit, was under construction and the plant was planned to permit eventual expansion to five equivalent generating units. The supervisory staff of the plant was so planned that with the addition of a Control Operator in direct charge of each separate generating unit on each shift, the supervisory staff should be sufficient for a plant consisting of several units. (R. 26, 27.)

The Tidd Plant is unique among steam electric generating plants for the extent and scope of automatic control and it has a much greater degree of automatic control concentrated in one point than any similar plant. (R. 21, 22 and 23.) Immediate control of the entire generating unit, consisting of boilers, turbines, generators, pumps, condensers and related auxiliary and accessory equipment, is concentrated in the Control Room and one man, the Control Operator, has entire direct control of the operation of the unit and he directs and supervises the work of the other men who are engaged in the operation of the unit during each shift. (R. 21, 23.)

It is important that the Court understands generally what is meant when the Tidd Plant is described as a highly

automatized plant. In the standard generating station, there is a boiler section or department where steam is produced for use in the operation of the turbines. The controls that regulate the flow of coal into the boilers and the introduction of water into the boilers are located at the boilers themselves. The gauges that show the steam pressure, temperatures, etc., are similarly located in the boiler department. The personnel who "operate" the boilers are under the direction of the boiler room foreman.

It is, of course, apparent that in handling large boilers, it would be impossible to feed them by hand. Coal is introduced into the boilers by mechanical means. As long as the operation of the boilers is "normal" and follows the recognized routine, i.e., the coal is fed into the boiler in sufficient quantity, and the water is pumped into the boiler in sufficient quantity so that the prescribed steam pressure and boiler temperature are maintained, it is only necessary for the attendants at the boilers to generally watch the controls located there. As long as the boiler operations are normal this observation of controls constitutes the major part of their work.

In power plant parlance an "emergency" occurs in the boiler room if there is a failure in any of the auxiliary boiler equipment such as the coal feeding equipment or the water pumps that introduce water into the boilers. In the plants of normal construction, such emergencies are handled by the boiler room personnel under the direction of the boiler room foreman.

Similarly, there is a turbine section with appropriate controls that relate to the input of steam into the turbines which operate the generators. Again, there are instruments and gauges that are located in the turbine room which are under constant observation by the personnel in the turbine room and as long as the operation of the turbine room equipment is normal and routine, their work is largely observation of the controls in order to make sure that the unit is operating properly.

There is a turbine room foreman who directs the personnel in the turbine room. As in the case of the boiler room, if there is deviation from normal operation in the turbine room the "emergency" thus created is handled by the personnel in the turbine room under the direction of the turbine room foreman.

Thus, the Court will understand that any deviation from normal routine operation of mechanical equipment in either of these two departments of the generating station, creates an "emergency" in power plant parlance for the obvious reason that each item of equipment is so completely integrated with other items that failure of one will inevitably affect the others. A simple example will illustrate the point. If insufficient coal is fed into a boiler to maintain steam output, the turbine on the line with that boiler will soon be affected. The turbine situation will affect the generator and the output of the plant will be seriously affected. If the operation of a turbine or generator is abnormal, the boiler on that line must be cut back to compensate for the reduced load.

As has been stated, in the standard generating station the handling of emergencies in the boiler room, and the turbine room, are under the direction of the boiler room foreman, and the turbine room foreman, respectively, because the controls that show the existence of any deviation from normal are in these departments.

In an automatized generating station like the Tidd Plant, there is essentially the same equipment for the production of electricity as there is in a standard generating station. That is to say, there are boilers, turbines and generators and auxiliary equipment but in this automatized station there is this important difference in respect to control equipment. In the Tidd Plant, for each unit, all the controls are concentrated in one room at one location. This includes the controls in respect to the boilers, turbines and generators and auxiliary equipment. *And these con-*

trols are all under the direction of one man—the Control Operator. (R. 21, 23.)

As a result, instead of having two supervisors (the boiler room foreman and the turbine room foreman) the Control Operator handles the functions of both. (R. 73, 74.) If an "emergency" devoleps in the boiler room or the turbine room the Control Operator in the Tidd Plant makes the decision as to what is to be done to correct it. Then he has authority to requisition and direct substantially all of the employees at the Tidd Plant. (R. 70, 75, 77, 78.) He deals with exactly the same type of situation as did the boiler room foreman or the turbine room foreman in the standard generating station. *But he does the same work that two different men did and do in the standard generating stations.* These men are nonexistent in the Tidd Plant and are unnecessary because of the concentration of controls in one place.

The above facts were brought out by a comparison of the supervisory set up at the respondent's old Philo Plant with its new Tidd Plant. The boiler room foreman and the turbine room foreman, needless to say, are not included in the collective bargaining unit at the Philo Plant. (R. 73, 74.) What is most significant is that the Board itself in 1941, excluded all foremen at the Philo Plant from the appropriate unit and thus excluded the turbine room foremen, the boiler room foremen and assistant foremen. (R. 74.) *In the Matter of The Ohio Power Company and Utility Workers Organizing Committee, Local 138 (C. I. O.)*, 34 NLRB, 116 (1941). Now the Board would have this Court believe a novel question has arisen! All that has happened is that two previously excluded job classifications have been combined in one, but the Board would include the resultant combination.

In the Tidd Plant, when these proceedings were commenced, there were four employees in the classification of Control Operators. One is on duty at all times, having the direct charge, control and responsibility for the operation

of the generating unit. As such he is the head of a recognized subdivision of the plant, such subdivision being one generating unit. (R. 22.) Since the plant presently consists of but one unit the Control Operator on duty now controls the entire output of the plant. The nature of his duties is such that he must make decisions "on-the-spot" and upon his own initiative to keep the plant in operation. (R. 18, 24, 70.)

Practically all the work of the Control Operator is carried on in the Control Room of the plant, although other employees, acting under his direction, are called upon to do work throughout the operating sections of the plant. The Control Room in the Tidd Plant was an innovation in the industry. It contains practically all the controls for operating the equipment of the entire unit. (R. 21.) Here too are located annunciators and other instruments from which the trained Control Operator can determine at all times the operating performance and condition of all the various equipment located throughout the plant, comprising the generating unit. In case of trouble at any point in the plant, or any other change of circumstances or conditions, the Control Operator is required to use his discretion and judgment to regulate, adjust and correct the performance of the equipment so as to produce an output in accordance with the requirements of the Company. His work is largely mental. (R. 24.) When the operation of the unit requires work to be done outside of the Control Room, it is done under the direction of the Control Operator by the Assistant Control Operator or the Auxiliary Equipment Operator. The two employees, who carry on this work under his direction, fulfill functions which, in other less highly automatized plants, would be covered by a large number of job classifications. (R. 22, 23.)

In addition to his duty to direct and instruct the subordinate employees in their work, the recommendations of the Control Operator concerning their employment, discharge or discipline are given particular weight, and it is

his duty to report any irregularity in the work of the employees working under his direction. (R. 23, 28.)

In order to qualify for the position of Control Operator an individual must be licensed as a stationary engineer by the State of Ohio, which requires the passing of an examination prescribed by the State on the technical aspect of the job, and he is further required to pass an examination prescribed by the Company. He must have a general education supplemented by technical education. (R. 24, 31, 32.)

At the time of the hearing in the representation case, Control Operators were paid the highest hourly rate in the plant, but it was indicated that the Company intended to change their compensation to a salary basis. (R. 28.) In December, 1947, Control Operators were placed on a monthly salary basis, the salary being in each case in excess of $325.00 per month. (R. 68, 75.)

Subsequent to the receipt by the Company of the Intermediate Report of the Trial Examiner the Company proposed to representatives of the Union that it would bargain with the Union as the collective bargaining representative of the employees at its Tidd Plant included in the collective bargaining unit designated by the Board, excepting and excluding therefrom employees in the classification known as Control Operators. This proposal was rejected by the Union. The Union commenced a strike at the Tidd Plant early in the morning of Monday, April 12, 1948, at about 6:00 a.m. and without any prior notice or warning. The strike continued through Thursday, April 15, 1948. The Union announced the pendency of the strike to the Company by a telegram addressed to the Superintendent of its Tidd Plant, dated April 12, 1948, at 2:11 p.m. which was received by the Superintendent later that afternoon, almost twelve hours after the strike started. Because of the public need for electricity it was necessary that the Tidd Plant and other generating plants of the

Company, around which the Union threw picket lines, be continued in operation. They were continued in operation through the use of supervisory personnel.

At the Tidd Plant all the employees in the collective bargaining unit designated by the Board remained away from work during the course of said strike with the exception of the Control Operators. They were notified to report to work during the course of said strike in the same manner as other supervisory personnel and each and every one of them, regarding and treating himself as a part of the supervisory personnel, reported for work and worked throughout the course of said strike. (R. 115, 133.)

It is uncontradicted and undisputed that each Control Operator in this highly unique plant:

1. Has two assistants whose activities are at all times under his direct supervision;
2. In an "emergency" (as the word is used in power plant parlance) can and does direct the activities of anyone in the plant;
3. Is head of a recognized subdivision, namely, the generating unit, and is in complete control of the generating unit;
4. Makes on the spot decisions on his own initiative in the exercise of such control. His work is largely mental;
5. Is authorized to make recommendations concerning the employment, discharge or discipline of his assistants which "would be given a great deal of weight";
6. Reports any irregularities in the work of employees who work with him;
7. Is required to have technical education, a State of Ohio stationary engineer's license and other specific qualifications, including "indicated ability to instruct and direct the work of others";

8. Occupies a position which is analogous to the combined positions of turbine room foreman and boiler room foreman at the Company's Philo Plant, which positions are of a supervisory nature and have been excluded from the bargaining unit by the Board's previous order.

II. THE PETITIONER'S INACCURACIES AS TO THE FACTS.

The Board has not presented to this Court substantial and significant facts which are uncontradicted and undisputed. This omission is especially apparent under the heading of its petition "The Board's Findings as to the Duties and Status of Control Operators."

First, at page 6 of the petition it stated that the duties of the Control Operators "are closely analogous to those of a stationary engineer in an industrial power plant."

This is not the fact and is unsupported by the evidence. There is no such proof in the record and no witness made any such comparison. The record is clear that this modern, highly automatic generating station is different from other generating stations. There is nothing from which a comparison can be drawn between this generating station and an industrial power plant. The petitioner in describing the duties of the Control Operator has neglected to call the Court's attention to the fact that he has two assistants whose activities he regularly and constantly directs; to the fact that in an "emergency" he has authority to and does direct the activities of anyone in the plant; to the fact that he is the head of a recognized subdivision; to the fact that he makes on-the-spot decisions necessary to keep the plant in operation for the public served with electricity; to the fact that he has authority to make recommendations concerning the employment, discharge or discipline of his assistants; and to the fact that he reports any irregularities in the work of the employees who perform work under his direction.

Second, the petitioner, on page 7, describes the activities of the assistant control operator as follows:

> "The assistant control operator spends fifty percent of his time in the control room assisting the control operator and receiving instructions in control of the unit; the other fifty percent of his time is spent in making tours of inspection of operating equipment under established routine and in checking particular equipment when defects are suspected (R. 35; 22, 77)."

We would like to refer the Court to page 22 of the record because the duties of the assistant control operators are there described as follows:

> "The activities of the assistant control operator, or approximately fifty per cent of his time, is spent in the control room assisting the control operator, and receiving instruction in the control of the unit; and the other fifty per cent of his time, or approximately fifty per cent of his time, is in making trips to the boilers, to the turbines, pumps, or other locations in the plant *as directed by the control operator,* or under established routine." (Emphasis added.) (R. 22.)

The petitioner has omitted the emphasized words which are of the greatest significance. This is one of many examples in which it has failed to present undisputed facts and advanced false premises in seeking a further review of the case by this Court.

Another example occurs in the description of the duties of the auxiliary equipment operators. They are described as follows at pages 7 and 8 of the petition:

> "The auxiliary equipment operator's duties consist of operating revolving screens, running ashes, inspecting fans on top of boilers, periodically visiting various parts of the plant to inspect auxiliary equipment, and making additional inspections of particular equipment when necessary (R. 35; 23)."

This language should be contrasted to the record. At page 23 the duties are there described as follows:

"His duties consist of operation of the revolving screens, running the ashes, inspection of fans on top of the boilers, and visits to various parts of the plant periodically to look at the equipment, or, *at the direction of the control operator, to look at some specific thing on which the control operator may suspect there is trouble.*" (Emphasis added.) (R. 23.)

Again, the petitioner has omitted any mention of the emphasized words which are undisputed and uncontradicted.

Third, in describing, at pages 8 and 9 of the petition, the functions of the Control Operator in an "emergency" the petitioner has attempted to picture them as routine but rare occurrences. It has attempted to obscure the true nature of an "emergency" in power plant parlance and the necessity of on-the-spot, instantaneous action in order to keep the generating station "on the line" supplying electricity to the public and the almost unlimited authority of Control Operators under such circumstances.

Still another example of the distortion of the facts occurs at the bottom of page 15 of the petition when the petitioner refers to the "sole difference" between the job of a boiler operator or a turbine operator at a nonautomatized plant and a Control Operator at this automatized plant. The "sole difference," says the petitioner, "lies in the number, diversity and greater handling simplicity of units which the Control Operator is able to regulate." The undisputed evidence is:

"In general, pump room operators, boiler room operators, turbine room operators, switchboard operators, are included in the bargaining units, but at the Tidd Plant, with the high degree of concentrated control, this man replaces all of those operators, substantially replaces all of those operators, and, *in addition, directs the activities of two other men in the plant, and has complete control of all of the equipment in the plant.* Whereas in the various operating jobs that you mentioned that are common to other plants, the men in those job classifications only have control over specific units of the whole. Where this man has control over

every—connected with everything at the present Tidd Plant." (Emphasis added.) (R. 17.)

Again the Board has failed to disclose substantial facts bearing on the supervisory status of the Control Operators.

ARGUMENT.

We have referred to the facts, and to the petitioner's omissions therefrom and inaccuracies therein, at considerable length because it is only by such reference that it can be demonstrated that the question presented on this petition is fundamentally a question of the application of rules of law to fairly complicated but essentially unique and peculiar local facts, and unfortunately those facts, clear and undisputed though they are, have not been presented to this Court by the petitioner. When the true facts are considered, we submit that the petition should be denied because:

1. The first reason for granting the writ advanced by petitioner is not sound because this case does not involve any question of national, general or novel importance or set any precedent of policy-making or administrative significance.
2. The second reason advanced by the petitioner is not sound because the court below did resort to legislative history.

1. At pages 14 and 15 of the petition the petitioner asserts in support of its first reason for granting the writ that it is frequently necessary for the Board to determine whether or not certain types of employees are supervisors within the meaning of the Act and that the decision of the court below puts such determination in doubt. So far as the Control Operators at the Tidd Plant are concerned and so far as the record in this case is concerned there can be little doubt about the supervisory status of these Control Operators and we submit that it is not necessary for the Board to make any determination different from the determinations it has made in the past. We say this particularly

in view of the Board's determination as far back as 1941 that the employees in the analogous job classifications at the respondent's Philo Plant should not be members of the collective bargaining unit in that plant. In view of this determination it hardly lies in the mouth of the petitioner to say that it is now confronted with a novel problem which should be determined by this Court. It is confronted with a novel problem only when it closes its eyes to the undisputed facts in the record of this case. When these facts are considered as they were by the court below, there is no novelty involved and no reason to expect that the decision in this case will promote industrial disputes or give rise to a large volume of litigation before the Board.

The fact that this decision is not novel and that it is not precedent-shattering is further illustrated by a comparison of this decision with some of the relatively recent decisions of the Board. For example, *In the Matter of Southern Alkali Corporation,* 84 NLRB No. 20, the Board excluded as a supervisor a chief record clerk who analyzed certain records and made certain entries on the records himself. His supervisory functions consisted of directing the work of 2 clerks. *In the Matter of Continental Oil Company,* 85 NLRB No. 140, head roustabouts were excluded as supervisors. They had no authority to hire or discharge employees or effectively to recommend hiring or discharging them. They were in charge of gangs of from 1 to 12 men. They were found to exercise independent judgment in performing their tasks and in assigning jobs to their gangs. *In the Matter of Nicholson Transit Company,* 85 NLRB No. 168, stewards who had charge of the galley and directed the employees who worked in the galley were excluded although their authority to hire and discharge such employees was disputed. *In the Matter of California Spray-Chemical Corporation,* 86 NLRB No. 63, second and third shift mill operators were excluded who had no authority to recommend the discharge of employees but did report irregularities and had authority to direct employees

on their shifts. *In the Matter of Bond Brothers,* 86 NLRB No. 70, various types of foremen who directed the work of a rather limited number of employees under them were excluded as supervisors. They had the power to recommend the hiring and firing of employees but none of them had ever had occasion to exercise such power. *In the Matter of Shelburne Shirt Company, Inc.,* 86 NLRB No. 148, probationary supervisors were excluded because they had authority responsibly to direct the work of other employees.

There is nothing about any of the above decisions to indicate that they will promote industrial disputes or give rise to a large amount of litigation. They are comparable to the decision of the court below in this case and indicate conclusively that there is nothing about that decision which would warrant the intervention of this Court.

The petitioner apparently would try this case not on its record but on a number of publications (not a part of this record) to which it refers in the many footnotes in its petition. We submit that the supervisory status of the Control Operator at the respondent's Tidd Plant is not to be determined by these various publications which are not in the record and is not to be determined by any definition of job classifications which has been adopted by some other branch of the Government. The supervisory status is to be determined by the facts in the record and those are facts which have been ignored by the Board. Those facts, however, rob this case of any novelty or of any general or national significance.

At pages 20 and 21 of the petition, the petitioner makes the unsupported and unwarranted assertion that "at least 200,000 individuals employed in jobs involving the control of automatic equipment" would be excluded from the Act by the decision of the court below. The falsity of this assertion can best be illustrated by a reference to the record:

> "Q. Is there, to your knowledge, any other plant where there is a job classification or an employee doing

equivalent work with the work that is done by control operators in the Tidd Plant? A. *I do not have knowledge of any other plant where there is a job classification whose duties are comparable to the control operator at the Tidd Plant.*" (Emphasis added.) (R. 21, 22)

This was also demonstrated at page 23:

"Q. As a matter of fact, isn't it true that the Tidd Plant has a much higher degree of automatic control than any other plant in operation in the country? A. The Tidd Plant has a much greater degree of automatic control concentrated in one point than any other plant of which I know. And I know that *we have designing engineers from all over the world visiting the Tidd Plant. Because they will not believe, on hearsay, that such an operation, such a concentration of control under one operator is possible.*" (Emphasis added.) (R. 23)

Thus, it is clear and undisputed in the record that the Tidd Plant is unique and that the job classification of Control Operator at that plant is equally unique. It is hard to see how anyone acting in good faith could say to this Court that there will be at least 200,000 craftsmen or other individuals affected by this decision when the decision relates only to a unique job classification at a unique plant.

In this connection we advert again to the undisputed fact that this job classification at the Tidd Plant is a combination of 2 job classifications at the Philo Plant and that each of these 2 classifications has been excluded from the bargaining unit by a previous Board decision. Having made such a previous decision some 9 years ago, it cannot seriously be contended by the Board at this time that any novel question or any matter of broad policy and administrative action is involved.

By no stretch of the imagination can this case be considered as setting any precedent of national significance when it is considered in the light of the undisputed and

uncontradicted facts in the record. The question involved is purely a private, local question. The only persons involved aside from the parties are the unique Control Operators at the unique Tidd Plant. There is no sound reason why this Court should concern itself with this case.

2. As we indicated in the Introductory Statement of this brief the Board apparently believes that this Court should grant to it what would amount to a rehearing to which it is not otherwise entitled because the Board thinks that the court below erred on a proposition of law, namely,

> "The holding of the court below, that the Board's resort to legislative history for aid in determining the construction to be placed upon the phrase 'responsibly to direct' was improper * * *"

The petitioner makes this representation to this Court in seeking a writ of certiorari in the face of the fact that the Court *did* refer to the legislative history. We respectfully refer this Court to the opinion of the court below; it said:

> "We think that the Board as a matter of law clearly erred in this decision. If resort were properly to be made to the statement made on the floor of the Senate by Senator Flanders of Vermont, who proposed the inclusion in the statute of the phrase 'responsibly to direct' other employees, we find in his explanation no such limitation as the Board imposes. While it does not appear that the control operators exercise the other specific powers set forth in the statute, *they engage regularly, as Senator Flanders expressed it, in 'the basic act of supervising.'* To be responsible is to be answerable for the discharge of a duty or obligation. Responsibility includes judgment, skill, ability, capacity, and integrity, and is implied by power. The control operators have no authority to hire or fire, but they do responsibly direct other employees. Each control operator is charged with the responsible direction of the generating unit and the men under him. With some minor exceptions he handles the entire operation of the plant. Hence, *the control operators*

come squarely within the purview of Senator Flanders' explanation." (Emphasis added.) (R. 172, 173)

The legislative history to which the Board referred in construing the phrase "responsibly to direct" consisted of remarks made by Senator Flanders. It is clear from the opinion of the court below that it did in fact refer to Senator Flanders' remarks and even quoted them in part; having done so, it concluded that "the control operators come squarely within the purview of Senator Flanders' explanation." There is then no support for the assertion that the Court of Appeals found the Board's reference to legislative history improper or that the Court of Appeals itself refused to refer to legislative history.

Perhaps the thing that the Board actually resents is that it attempted to direct the attention of the court below to only a part of Senator Flanders' remarks. The court below considered his remarks in full and based its opinion on a part of those remarks which had been omitted by the Board in its brief in the court below.

Therefore, the second reason that the Board has advanced for granting a writ of certiorari can be disposed of very quickly. The court below did the very thing which the petitioner complains that it did not do. It is not necessary to consider whether resort to legislative history was proper or improper under these conditions.

CONCLUSION.

We respectfully submit that neither of the reasons advanced by the petitioner for the granting of this writ is persuasive or tenable. The case involves nothing more than peculiar local facts which are important only privately. The petition should be denied.

Respectfully submitted,

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